

**IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL**

**Appeal From Order No. 754 of 2001(Defective)**

**(Old No. 303/1994)**

New India Assurance Company

Limited, Haldwani ..... Appellant

Versus

Govind Lal Verma & others ..... Respondents

Mr. R.B. Agarwal, learned counsel for the appellant.

Mr. Amit Bhatt, learned counsel for the respondents.

**Hon'ble P.C. Verma, A.C.J.**

**Hon'ble P.C. Pant, J.**

**Delivered by Hon'ble P.C. Pant, J.**

This is an appeal under Section 173 of the Motor Vehicles Act, 1988 against the judgment and award dated 16.08.1994 passed by Shri P.D. Dhaundial, the then learned IV Additional District Judge / Presiding Officer, Motor Accident Claims Tribunal, Nainital whereby in M.A.C. Case No. 283 of 1988 the Tribunal has awarded Rs. 1,35,000/- as compensation to the appellant.

2. Brief facts of the case giving rise to the present appeal are that on 10.01.1988, Vinod Verma (deceased) was travelling from Haldwani to Almora in a bus bearing registration No. URN 9428. The driver of the bus was driving it rashly and negligently. When the bus reached near Khairana, the driver lost control of the bus and it fell in a gorge and caught fire. Shri Vinod Verma (deceased) and many other passengers got burn injuries and died. The deceased was 25 years of age at the time of his death. He was a jeweler and used to earn Rs. 1,500/- per month. Mr.

Govind Lal Verma, claimant No. 1 is father of the deceased while Smt. Laxmi Devi (claimant No. 2) and Km. Champa (claimant No. 3) are mother and sister respectively of the deceased. Opposite party No. 1, Kanta Devi was owner of the vehicle and New India Assurance Company Ltd. (present appellant) was the company with whom the vehicle was ensured. Opposite party No. 4 in the petition was the driver of the vehicle in question.

3. In the written statement before the trial Court, the owner of the vehicle has admitted the accident and death of the passengers including that of Shri Vinod Verm. However, the opposite parties including the owner have denied allegations that the bus was being driven rashly and negligently by the driver of the bus. Opposite party No.. 2 (present appellant) has taken a further plea that the owner of the bus has no permit to ply the vehicle between Haldwani and Almora.

4. Learned Presiding officer of the trial after examining the pleas, framed following issues:

- i) Whether, on the date of the alleged accident the bus in question was being driven for or on behalf of opposite party No. 1 or whether it was being driven for or on behalf of O.P. No. 4? In either case, its effect?
- ii) Whether, in the accident in question on account of which Vinod Verma, son or appellant Nos. 1 and 2 and brother of appellant No. 3 died was due to rash and negligent driving of the driver of the bus?
- iii) Whether, on the date of the alleged accident the O.P. No. 1 was not the owner of the vehicle and had no control over of driver of the vehicle? If so, its effect?
- iv) Whether, at the relevant time bus was being driven without valid permit for the route in question? If so, its effect?

- v) Which of the opposite parties is liable to pay compensation to the claimants?
- vi) To what amount of compensation, if any, the claimant are entitled?

5. After recording the evidence of the parties and hearing them, learned Presiding officer of the Tribunal has found that the accident in question has taken place due to the rash and negligent driving on part of the driver, who was employed by opposite party No. 1 as owner of the bus. The Tribunal further found that since the bus was plying under Kumaon Motor Owners Union Ltd., hence it had the route permit. The Tribunal also came to the conclusion that the claimants are entitled to compensation to the tune of Rs. 1,35,000/- and the New India Assurance company Ltd. With whom the vehicle was ensured was liable to pay it. Accordingly, the Award was passed for the sum along with 10% interest on the amount of compensation. Aggrieved with the Award, New India Assurance company Ltd. has preferred this appeal.

6. We have heard learned counsel for the parties and perused the record. Evidence on record shows that monthly income of the deceased was less than Rs. 1,200/- per month. If a liberal view is taken, then it can be said that out of this amount the deceased would have spent about Rs. 700/- on his family after deducting his day-to-day expenses. So an amount of Rs. 8,400/- was rightly assessed as annual income which he would have spent on his family. The age of the deceased was 25 years. As such multiplier of 15 is reasonable in this case. The amount of compensation thus arrived is as under:

$$8400 \times 15 = 1,26,000/-$$

Respondent Nos. 1, 2 i.e. father and mother of the deceased were aged 60 and 55 years respectively and the sister of

the deceased, respondent No. 3, was aged 20 years at the time of the death Vinod Verma. He was their last hope as the burden of the livelihood of the family was solely on his shoulders. Therefore, an amount of Rs. 9,000/- on account of mental pain and suffering appears to be reasonable in this case. Thus, total amount of compensation in this case comes out to Rs. 1,35,000/- which is liable to be paid by M/s New India Assurance Company Ltd. i.e. the present appellant in this appeal.

8. We find no fault in the order passed by the Claims Tribunal while awarding compensation to the extent of Rs. 1,35,000/- along with 10% interest per annum from the date of petition till the date of actual payment. Therefore, the appeal is devoid of merits and is, hereby dismissed. No order as to costs. Amount deposited in this Court, if any, shall be transmitted to the M.A.C.T. concerned for its disbursement amongst the claimants of the deceased.

**(P.C. Pant, J.)**

**(P.C. Verma, A.C.J.)**

Dt: 07.07.2004

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